SUPREME

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 630.

THE UNITED STATES, PETITIONER,

vs.

JOSEPH S. HARRIS, EDWARD M. PAXSON, AND JOHN LOWBER WELSH, RECEIVERS OF THE PHILADELPHIA AND READING RAILROAD COMPANY.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Of November Sessions, 1895.

No. 90.

THE UNITED STATES OF AMERICA, *vs.* JOSEPH S. HARRIS, EDWARD M. PAXSON and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company.	Summons Assumpsit.

Pleas before the Honorable, the Judge of the said Court:

It is thus contained:

Be It Remembered, That on the twentieth day of January, A. D., 1896, upon praecipe filed by Ellery P. Ingham, Esp., Attorney of the United States for the Eastern District of Pennsylvania, a Writ of Summons Assumpsit issues, which, with the return of the Marshal thereto, is in the words and figures following, to wit:

2 UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA. } *ss.*

THE PRESIDENT OF THE UNITED STATES,

To the Marshal of the Eastern District of Pennsylvania, Greeting:—

We Command You, That you summon Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad, late of your District, if they may be found therein, so that they be and appear before the Judge of the District Court of the United States, for the Eastern District of Pennsylvania, at a session of the same Court to be holden at Philadelphia, on the first Monday of February next, to answer to the United States of America of a plea in assumpsit, etc. And have you then there this writ.

Witness the Honorable William Butler, Judge of said Court at Philadelphia, this twentieth day of January, A. D., 1896, and in the one hundred and twentieth year of the Independence of the United States.

[SEAL.]

CHARLES S. LINCOLN,
Clerk of District Court.

Endorsed: The service of the within writ is hereby admitted, January 22, 1896. J. D. Campbell, General Solicitor for Receivers.

Service accepted as appears above. So answers. Alexander P. Colesberry, U. S. Marshal, per Abram B. Myers, Deputy.

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3 THE UNITED STATES OF AMERICA,

vs.

JOSEPH S. HARRIS, EDWARD M. PAXSON and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company.

U. S. D. C.

Nov. Sessions, 1895.

No.

STATEMENT OF PLAINTIFF'S CLAIM.

The United States of America, by Ellery P. Ingham, Esq., its Attorney, brings this suit against the defendants to recover the sum of five hundred dollars as a penalty for violation of R. S., Sect. 4,386–8, and avers as follows:

The defendants are receivers of the Philadelphia and Reading Railroad Company, a corporation organized under the laws of the State of Pennsylvania, having its principal place of business in the City of Philadelphia, in the said State.

The defendants' road forms a line of road over which cattle, sheep, swine and other animals are conveyed from one State to another, to wit, from the State of New York to the State of Pennsylvania.

On or about the 23d day of November, A. D., 1895, a car load of horses was shipped from Buffalo, in the State of New York, consigned to Philadelphia, in the State of Pennsylvania, over the Lehigh Valley Railroad Company, a line connecting with defendants' railroad, and came upon the line of the said defendants' railroad at Bethlehem, in the State of Pennsylvania, upon the 24th day of November, A. D.,
4 1895, and were transported over the said line thence to Philadelphia, in the said State, arriving at the Third and Berks Street Station of the said defendant railroad company on the 25th day of November, A. D., 1895.

The defendant did knowingly, wilfully and unlawfully confine the said horses in a car upon its said road for and during a longer period than twenty-eight consecutive hours, to wit, for the period of seventy-two consecutive hours, inclusive of the time during which said animals were so confined without such rest upon the said connecting road, to wit, the Lehigh Valley Railroad, from which the car was received by the defendant, without unloading the said horses for rest, water and

feeding for a period of at least five consecutive hours; that the said defendant was not prevented from so unloading said animals or any part thereof by storm or other accidental cause, and that said animals were not then and there carried by the defendant in a car or other conveyance in which they could and did have proper food, water, space and opportunity to rest.

And the said defendant has refused to pay the said sum of five hundred dollars, which is justly due the plaintiff, although often requested so to do. Wherefore the plaintiff brings suit.

ROBERT RALSTON,
Asst. U. S. Attorney.

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5 And afterwards, to wit, on the thirtieth day of June, A. D. 1896, the said defendants,

Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, by their attorney, John G. Lamb, Esq., make their plea in the words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA, *vs.*	Nov. Sessions, 1895.
JOSEPH S. HARRIS, EDWARD M. PAXSON and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company.	No. 90.

The defendants named in the above entitled case plead "Non Assumpsit."

JOHN G. LAMB,
Attorney for Defendants,

JUNE 30, 1896.

6 And thereupon, on the eighth day of December, A. D. 1896, a jury being called, come, to wit: Edward, Lebo, James B. Wright, Daniel C. Brumbach, Isaac Richards, John T. Morris, Caleb C. Coburn, Wm. H. Dickson, John Bossard, Robert A. Michael, Samuel Marshall, Theodore I. Heizmann, Morgan H. Troth, who, being duly impanelled, returned, chosen, tried and sworn or affirmed to speak the truth in the issue joined in this cause between the United States of America, plain-

tiff, and Joseph H. Harris, Edward M. Paxon and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, defendants, do say, that, upon the issue joined in this cause they find for the United States, plaintiff, and against Joseph S. Harris, Edward M. Paxon and John Lowber Welsh, defendans, for the sum of two hundred dollars, with costs.

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7 MOTION OF THE DEFENDANTS FOR JUDGMENT FOR DEFENDANTS UPON POINTS RESERVED.

IN THE DISTRICT COURT OF UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA,	Nov. Sessions, 1895.
vs.	
RECEIVERS OF THE PHILADELPHIA AND READING RAILROAD COMPANY.	No. 90.

And now, December 9th, 1896, the defendants, by John G. Lamb, Esq., their attorney, moves the Court for judgment in their favor, and against the plaintiff, upon the following points reserved by the Court upon the trial of the above case.

"1. The statute under which this suit is brought is a penal one and must be strictly construed. It does not include within its terms Receivers of railroads, and the defendants cannot be held liable as such Receivers in this action."

"7. Under all the evidence in this case your verdict should be for the defendants."

JOHN G. LAMB,
Attorney for Defendants.

8 MOTION OF DEFENDANTS FOR NEW TRIAL.

IN THE DISTRICT COURT OF UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA,	Nov. Sessions, 1895.
vs.	
RECEIVERS OF THE PHILADELPHIA AND READING RAILROAD COMPANY.	No. 90.

And now, December 9th, 1896, the defendants, by John G. Lamb, Esq., their attorney, move for a rule to show cause why a new trial should not be granted in above case, and file the following reasons in support thereof:

I. Because the learned Judge refused the defendants' second point, as follows:

"2. There is no evidence in this case, that the defendants knowingly and willingly confined the said horses in said car, for a longer period than twenty-eight hours without unloading the same."

II. Because the learned Judge refused the defendants' third point, as follows:

"3. Upon the arrival of said horses at their destination in Philadelphia, and when the said car was put in position for unloading, the said horses being then in charge of an agent of the shipper, whose duty it was to unload and care for them, the relation of defendant, as a carrier, under the terms of the United States Statute, ceased, and this defendant cannot be held liable under the terms of said statute, for the period during which the horses remained in the car after that time."

III. Because the learned Judge refused the defendants' fourth point, as follows:

9 "4. After the said horses arrived at their destination it was the duty of the shipper's agent in charge thereof, under the bill of lading in this case, to feed and water the horses, if expedient, and the defendants herein cannot be charged with liability in this case, because of his failure so to do."

IV. Because the learned Judge refused the defendants' sixth point, as follows:

"6. The evidence in this case shows that the horses in question were accompanied, during transportation, by an agent of the shipper, whose duty it was, under the terms of the bill of lading issued therefor, to take care of, feed and water the said horses during transportation."

V. Because the verdict was against the evidence.

VI. Because the verdict was against the law.

JOHN G. LAMB,
Attorney for Defendants.

And afterwards, the cause having been heard upon the said motions of the defendants, for judgment for the defendants upon the points reserved, and for a new trial and reasons in support thereof, and due deliberation being had, the Opinion of the Court being filed is in the words and figures following, to wit:

IN THE DISTRICT COURT OF UNITED STATES,
10 EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES,

vs.

JOSEPH S. HARRIS, EDWARD M. PAXSON and JOHN LOWBER WELSH
Receivers of the Philadelphia and Reading Railroad Company.

RULES FOR JUDGMENT ON POINTS RESERVED.

The defendants are sued under Section 4388 of the Revised Statutes, charged with willful disregard of the law relating to the transportation of live stock. The section provides that, "Any company, owner or custodian of such animals who knowingly and willfully fails to comply with the provisions of the two preceding sections shall for every such failure be liable for, and forfeit and pay a penalty of not less than one hundred nor more than five hundred dollars."

The construction of the statute, and the proceeding under it, are governed by the rules of the criminal law, as fully as if the proceeding was by indictment. The exclusive purpose of the section is to inflict punishment. Those named as liable to such punishment are

the Railroad Co., the owners, and the custodians of the animals. The defendants here sued are neither. What reason, therefore, is there for supposing that the suit can be maintained? The language must receive a strict construction, confined to its obvious import. (U. S. *vs.* Hartwell, 6 Wallace 395; U. S. *vs.* Wiltberger, 5 Wheat 76; Groosm *vs.* Harmon, 59 Ala. 519; Commth. *vs.* Wells, 110 Pa. St. 463.) No straining
11 however desperate, would be adequate to make the terms embrace the defendants. They are simply the Court's officers, appointed to execute its orders. The property is in custody of the Court and is controlled and managed by it, through these officers. It is immaterial to say that in this view no one can be punished under the section during such custody, if it were true. It would not be true, however, for the owners, as well as those in direct charge of the stock, may be so punished during such custody. If others also should be punished Congress should provide for it. The instances cited by the prosecution in which Courts have enforced the Inter-state Commerce law, and other statutory provisions relating to the management of railroads and their property, generally, while in the custody of the law, are equally immaterial. Such cases bear no relation to this. Of course, Courts will enforce observance of these provisions, in its management of the property and business, when attention is called to the subject. The question whether a criminal proceeding may be prosecuted to punish their officers under the section in question is a totally different one. If it be said the intention is not to punish these officers, then who is intended to be punished? Certainly not the company and stockholders, from whose control the road was taken, and who are not sued in consequence. Surely it is not intended to punish creditors, who had no possible connection with the matter complained of. The Courts permit suits to be brought
12 against such officers for debts, or other liabilities incurred, as a means merely of ascertaining the amount due; but judgments recovered even in such cases can only be enforced by consent and direction of the Court.

The defendants rule for judgment, notwithstanding the verdict is made absolute.

And thereupon it is considered and adjudged that the said plaintiffs, the United States of America, take nothing by their said writ, and that the said defendants, Joseph S. Harris, Edward M. Paxon and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, do go thereof without day.

And afterwards, on the eighth day of March, A. D. 1897, a Bill of Exceptions, duly signed by the Honorable, the Judge of the Court, here being filed, is in the words and figures following, to wit:

13 IN THE DISTRICT COURT OF THE UNITED STATES,
EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA, *vs.*	Nov. Sessions, 1895.
JOSEPH S. HARRIS, EDWARD M. PAXSON and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company.	No. 90.

BE IT REMEMBERED, That in the said Sessions of November, 1895, came the said plaintiff into the said Court, and impleaded the said defendants, in a certain plea of Assumpsit, etc., in which the said plaintiff declared (Prout Statement) and the said defendants pleaded (Prout Plea). And thereupon issue was joined between them.

And afterwards, to wit, at a session of said Court, held at the District aforesaid, before the Honorable William Butler, Judge of the said Court, the eighth day of December, 1896, the aforesaid issue between the said parties came to be tried by a jury of the said District for that purpose duly empanelled (Prout list of jurors), at which day came as well said plaintiff as the said defendants, by their respective attorneys; and the jurors of the jury aforesaid, impanelled to try the said issue, being also called, came, and were then and there in due manner chosen and sworn or affirmed, to try the said issue; and upon the trial

14 the counsel of the said United States called a number of witnesses, the substance of whose testimony was that the defendants, as Receivers aforesaid, while being in possession of and operating the property of a railroad company, whose road formed part of a line of road over which cattle, sheep, swine and other animals were conveyed from the State of New York to the State of Pennsylvania, did, through their agents, within the District aforesaid, on November 24th, 25th, and 26th, 1895, knowingly and willfully confine certain horses in a car for a longer period than twenty-eight consecutive hours, without unloading the same for rest, food and water, for at least five consecutive hours, contrary to the provisions of Sections 4386, 4387, and 4388 of the Revised Statutes of the United States.

The counsel for the defendants produced evidence in defence of the plaintiff's claim, and the learned Judge thereupon charged the jury, reserving for subsequent determination the following points of law submitted by counsel for defendants:

1. "The Statute under which this suit is brought is a penal one, and must be strictly construed. It does not include within its terms Receiv-

ers of Railroads, and the defendants cannot be held liable as such Receivers in this action."

7. "Under all the evidence in this case your verdict should be for the defendants."

And thereupon the jury did find a verdict for the plaintiff in the sum of two hundred ($200) dollars, wih six (6) cents costs.

And thereafter, to wit, upon December 11th, 1896, counsel for defendants filed a motion for a rule for a new trial, and also for a motion for a rule for judgment for the defendants, *non obstante veredicto*, upon the aforesaid points of law reserved, and thereafter, to wit, on January 29th, 1897, argument having been had upon the defendants' said motion for rule for judgment, *non obstante veredicto*, upon the points of law reserved, the Court made absolute the said rule and filed an Opinion (Prout Opinion).

15 And thereupon, to wit, on January 29th, 1897, on motion of the counsel for the said defendants, judgment was duly entered for the defendants, *non obstante veredicto*, upon the said points of law reserved, and counsel for the plaintiff did then and there except to the said entry of judgment and Opinion of the Court.

The counsel for the plaintiff did thereafter duly tender this Bill of Exceptions to the said entry of judgment and Opinion of the Court, and requested the Judge aforesaid to sign the same, according to the form of the Statute in such case made and provided. And thereupon the aforesaid Judge, at the request of the said counsel for the plaintiff, did put his hand to this Bill of Exceptions, pursuant to the aforesaid Statute, in such case made and provided, the eighth day of March, 1897.

(Signed) WILLIAM BUTLER, *J.*

16 And afterwards, to wit, on the twenty-fifth day of June, A. D. 1897, a petition for a writ of error, with assignments of error and prayer for reversal, of the judgment entered in this cause, as also an order of allowance of a writ of error, being filed, are in the words and figures following, to wit:

IN THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA, Plaintiff in Error, *vs.* JOSEPH S. HARRIS, *et al.*, Receivers of the Philadelphia and Reading Railroad Company, Defendants in Error.	Nov. Sessions, 1895. No. 90.

PETITION FOR WRIT OR ERROR.

The above-named plaintiff in error, believing itself to be aggrieved by the rulings and final judgment of the District Court of the United States for the Eastern District of Pennsylvania, entered on the twenty-ninth day of January, A. D. 1897, in the above-named cause, hereby prays for a writ of error to the said District Court of the United States for the Eastern District of Pennsylvania, under and according to the laws of the United States in that behalf made and provided, and, also, that all and further proceedings in said District Court shall be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals, and that a transcript of the records of proceedings and papers upon which such final judgment was made, duly authenticated, may be sent to the United States Court of Appeals.

And it will ever pray.

JAMES M. BECK,
United States Attorney.
By F. F. KANE,
Ass't United States Attorney.

JUNE 25, 1897.
Allowed.
GEO. M. DALLAS,
Circuit Judge.

18 ASSIGNMENTS OF ERROR, ETC.

(Filed June 25, 1897.)

IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA,
vs.
JOSEPH S. HARRIS, *et al.*, Receivers, etc.

Nov. Sessions, 1895.
No. 90.

ASSIGNMENT OF ERROR.

And now, to wit, June 25, 1897, comes the said United States of America, by James M. Beck, its attorney, and says that in the record and proceedings in the above entitled case there is manifest error in this, to wit:

The Court erred in making absolute the rule filed by the defendants for judgment, *non obstante veredicto*, upon the points of law reserved.

And the United States, plaintiff in error, prays that the judgment for the defendant entered in the said cause be reversed, and that judgment be entered therein for the United States upon the verdict rendered by the jury.

JAMES M. BECK,
United States Attorney.

By F. F. KANE,
Ass't United States Attorney.

18 UNITED STATES OF AMERICA,
EASTERN DISTRICT OF PENNSYLVANIA. } *ss.*

I, Charles S. Lincoln, Clerk of the District Court of the United States, for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of the record and proceedings in the said Court in a certain action of Assumpsit therein lately depending, wherein the United States of America is the plaintiff and Joseph S. Harris, Edward M. Paxon and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, are the defendants, as full and entire as the same now remains of record in said court.

In testimony whereof, I have hereunto subscribed my name and

affixed the seal of the said District Court, at Philadelphia,(this ninth day of July, A. D. 1897, and in the one hundred and twenty-second year of the Independence of the said United States.

CHARLES S. LINCOLN,
Clerk District Court.

[SEAL.]

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19 UNITED STATES OF AMERICA, *ss.*

The President of the United States,

To the Honorable the Judge of the District Court of the United States for the Eastern District of Pennsylvania.

GREETING:

BECAUSE In the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you between the United States of America, plaintiff, and Joseph S. Harris, Edward M. Paxon and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, defendants, a manifest error hath happened, to the great damage of the said United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record of proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Third Circuit, together with this writ, so that you have the same at the City of Philadelphia within thirty days, in the said United States Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the twen'y-sixth day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

WM. V. WILLIAMSON, JR.
Clerk of the U. S. Circuit Court of Appeals,
Third Circuit.

Allowed by
GEO. M. DALLAS,
Circuit Judge.

JUNE 29, 1897.

Supreme Court U. S.
FILED
DEC 10 1898
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, PETITIONER,
v.
JOSEPH S. HARRIS, EDWARD M. PAXSON, and John Lowber Welsh, receivers of the Philadelphia and Reading Railroad Company.

No. 830 169

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

8824

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, PETITIONER,
v.
JOSEPH S. HARRIS, EDWARD M. PAXSON, and JOHN LOWBER WELSH, receivers of the Philadelphia and Reading Railroad Company. } No. —.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

Comes now the Solicitor-General, on behalf of the United States, and prays for a writ of certiorari to the United States circuit court of appeals for the third circuit in the above-entitled cause.

The proceeding herein is an action of assumpsit which was brought in the United States district court for the eastern district of Pennsylvania on the 20th day of January, 1896, by the United States against the receivers of the Philadelphia and Reading Railroad Company to recover the penalty allowed by sections 4386, 4387, 4388, and 4389 of the Revised Statutes, in the case of "cattle,

sheep, swine, and other animals" being confined by railroad companies in cars, etc., "for a longer period than twenty-eight consecutive hours without unloading the same for rest, water, and feeding for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes."

The plaintiff proved at the trial of the case that the defendants, as receivers aforesaid, had, through their agents, on November 25 and 26, 1895, "knowingly and willingly" failed "to comply with the provisions" of sections 4386 and 4387 while transporting certain horses from Bethlehem, Pa., the said horses having been received by them at Bethlehem in course of a through shipment from Buffalo, N. Y.

The question whether the receivers of a railroad company were officially liable under the law was reserved by the court, and a verdict was rendered for the Government. A rule was then taken for judgment *non obstante veredicto*, and his honor, Judge Butler, before whom the case was tried, in an opinion (p. 7 of the record) made the rule absolute, and ordered a judgment to be entered for the defendants.

A writ of error was sued out from the United States circuit court of appeals for the third circuit to review this judgment, and, after an argument in the latter court, the judgment was affirmed. A brief opinion was filed, in which, after calling attention to the particular sections under which the suit was brought his honor, Judge Acheson, declared:

> The persons designated in section 4388 and made liable to the penalty are "any company, owner, or

> custodian of such animals." The district court held that this language does not embrace receivers, who are simply the court's officers appointed to execute its orders; that the Philadelphia and Reading Railroad was in the custody of the court and was controlled and managed by it through these officers; and that the statute being penal, it was not to be extended by construction so as to take in receivers. We can not doubt the soundness of these views, and, accordingly, we affirm the judgment of the district court.

It is respectfully submitted that, for the following reasons, this construction of the aforesaid sections was erroneous; that receivers of railroad companies may become officially liable to the penalty provided for in section 4388, the properties in their hands being properties of railroad companies which they, as officers of the court, must manage in conformity with the law.

(I) From the wording of the sections it is clear that Congress intended to enact a law applicable to all railroad companies alike, whether solvent or insolvent, whether in the hands of their officers or in the hands of receivers appointed by the court. There is no narrowing inference to be drawn from the language used. The terms "railroad company" or "companies" recur several times throughout the sections, and no qualifying words are anywhere added from which the conclusion might be drawn that the law was to apply only to companies whose properties were still in the hands of their officers and directors.

(II) Such being the clear intendment of the law, it is only by giving an undue effect to the rule of strict construction applicable to penal and semipenal statutes

that the scope of the statute can be so narrowed as to exclude corporations whose properties are being managed by receivers. The cases in which the rule as to penal statutes has been enforced do not, it is submitted, justify this narrow construction of the act.

(III) If it be argued that Congress did not actually have in mind corporations whose properties had passed into the hands of receivers as well as those whose properties were still in the hands of their officers and directors, the principles of the law of railroad receiverships would nevertheless require that receivers of railroad companies should obey the sections, inasmuch as Congress has referred to "railroad companies" without distinction. In assuming the rights of the common carrier, the receivers in the present case became officially subject—or, more strictly speaking, the *property in their hands* became subject—to the public and private liabilities of the carrier, both at common law and statutory. This being so, it would seem that the law of receiverships invites, rather than repels, what the Government conceives to be the true construction of the act.

(IV) The contrary construction, besides being entirely unwarranted by the wording of the sections, will establish a most unfortunate precedent. It will place, as it were, a premium on insolvency by allowing insolvent railroad companies to "cut" rates in cases of the transportation of live stock where other competing companies that have remained solvent are obliged to maintain a higher rate for the same transportation, to say nothing of the suffering of the animals transported, and the evil to the communities where they are delivered. Furthermore, the

decision in this case, if allowed to stand, will necessarily be regarded as a judicial authorization to receivers generally to disregard any police regulations which may be established by Congress for the management of railroad companies, whenever and wherever such regulations speak solely of "railroad companies" and fail to mention receivers *eo nomine*.

This is a class case. A number of prosecutions have been commenced by the Department of Justice against receivers of railroad companies for violations of sections 4386, 4387, 4388, and 4389 of the Revised Statutes, which are held in abeyance awaiting the final determination of this case.

It is respectfully submitted that the question involved is, for these reasons, one of great importance to the public, and that it deserves the examination and consideration of this court.

The Solicitor-General therefore respectfully prays the court to issue a writ of certiorari to the United States circuit court of appeals for the third circuit, requiring the said court to certify the record and proceedings in the case to this court, for its review and determination in accordance with the provisions of section 6 of the act of Congress approved March 3, 1891, the petitioner believing that manifest error has arisen, and that the United States will be greatly prejudiced in its rights unless said writ of certiorari is allowed.

JOHN K. RICHARDS,
Solicitor-General.

MISSING PAGE

UNITED STATES OF AMERICA, *ss.* 20

The President of the United States,

To Joseph H. Harris, Edward M. Paxon and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company,

GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the City of Philadelphia within thirty days, pursuant to a writ of error, filed in the Clerk's Office of the District Court of the United States for the Eastern District of Pennsylvania, wherein the United States of America is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, The Honorable George M. Dallas, Judge of the Circuit Court of the United States, this twenty-ninth day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

GEO. M. DALLAS,
Circuit Judge.

JUNE 29, 1897.

14 IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

And afterwards to wit, on the twenty-third day of September, A. D. 1897, this cause being called for argument on the Transcript of record from the District Court of the United States for the Eastern District of Pennsylvania, before Hon. M. W. Acheson, and Hon. George M. Dallas, Circuit Judges and Andrew Kirkpatrick, District Judge, and being argued by counsel for the respective parties and the court not being fully advised in the premises takes further time for consideration thereof.

And afterwards to wit, on the fourteenth day of March A. D. 1898, comes the parties aforesaid, and the court now being fully advised in the premises renders the following opinion, to wit:

15 IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

THE UNITED STATES Plaintiff in Error
vs.
JOSEPH S. HARRIS, EDWARD M. PAXSON and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company, Defendants in Error.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Before Acheson and Dallas, Circuit Judges, and Kirkpatrick, District Judge.

Acheson, Circuit Judge:

The question here is whether the Receivers of the Philadelphia and Reading Railroad Company, appointed by and acting under the orders of the Circuit Court of the United States for the Eastern District of Pennsylvania, are liable, under sections 4386–4389 of the Revised Statutes of the United States, to the penalty imposed by Section 4388 for keeping horses in cars more than twenty-eight consecutive hours without unloading. The persons designated in Section 4388, and made liable to the penalty, are "any company, owner or custodian of such animals". The District Court held that this language does not embrace receivers, who are simply the Court's officers appointed to execute its orders; that the Philadelphia and Reading Railroad was in the custody of the court, and was controlled and managed by it through these officers; and that the statute, being penal, was not to be extended by construction so as to take in receivers. We cannot doubt the soundness of these views, and, accordingly, we affirm the judgment of the District Court.

It is proper that we should here state that, shortly after the case was argued, this court (all the judges concurring) reached the conclusion above expressed; but, owing to a misunderstanding among the judges as to the assignment of the case, the announcement of the decision has been delayed.

The judgment of the District Court is Affirmed.

16 UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT TERM, 189

No.

UNITED STATES OF AMERICA, Plaintiff in Error,
vs.
JOSEPH S. HARRIS, EDWARD M. PAXSON, and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company, Defendants in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said District Court, in this cause, be, and the same is hereby affirmed.

GEO. M. DALLAS, *J.*

PHILADELPHIA, *March 21, 1898.*

17 UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD DISTRICT.

No. 10

September Term 1897.

UNITED STATES OF AMERICA, Plaintiff in Error,
vs.
JOSEPH S. HARRIS, EDWARD M. PAXSON, and JOHN LOWBER WELSH, Receivers of the Philadelphia and Reading Railroad Company, Defendants in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

And now, to wit, this 23rd day of November A. D. 1898, it is ordered that Mandate issue to the said District Court of the United States for the Eastern District of Pennsylvania in accordance with the opinion and judgment of this Court in said cause.

GEO. M. DALLAS, *J.*

18 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America,

To the Honorable the Judges of the District Court of the United [SEAL] States for the Eastern District of Pennsylvania.

GREETING;

WHEREAS, lately in the District Court of the United States for the Eastern District of Pennsylvania, before you, or some of you, in a cause between the United States of America Plaintiff in Error, against Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company Defendants in Error; wherein the verdict of the jury and judgment of said court entered in said cause are in the following words, viz:

And thereupon, on the eighth day of December, A. D. 1896, a jury being called, come, to wit: Edward Lebo, James B. Wright, Daniel C. Brumbach, Isaac Richards, John T. Morris, Caleb C. Coburn, Wm. H. Dickson John Bossard, Robert A. Michael, Samuel Marshall, Theodore I. Heizmann Morgan H. Froth who being duly impanelled, returned, chosen, tried and sworn or affirmed to speak the truth in the issue joined in this cause between the United States of America, plaintiff, and

19 Joseph H. Harris Edward M. Paxson and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, defendants, do say, that, upon the issue joined in this cause they find for the United States, plaintiff, and against Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, defendants, in the sum of two hundred dollars with costs.

The defendants, rule for judgment, notwithstanding the verdict is made absolute.

And thereupon it is considered and adjudged that the said plaintiffs, the United States of America, take nothing by their said writ, and that the said defendants, Joseph S. Harris Edward M. Paxson and John Lowber Welsh, Receivers of the Philadelphia and Reading Railroad Company, do go thereof without day as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Third Circuit by virtue of Writ of Error agreeably to the act of Congress, in such case made and provided, fully and at large appears.

20 AND WHEREAS, in the present term of September, in the year of our Lord one thousand eight hundred and ninety-seven, the said cause came on to be heard before the said United States Circuit Court of Appeals on the said transcript of record, and was argued by counsel:

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this court, that the judgment of the said District Court in this cause, be, and the same is hereby affirmed.

PHILADELPHIA, *March 21, 1898.*

21 You, therefore, are hereby commanded that such proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said Writ of Error notwithstanding.

WITNESS, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 23rd day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

W. H. MERRICK,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

(Endorsed) U. S. Circuit Court of Appeals, Third Circuit. No. 10, Sept. Term, 1897. United States of America Plaintiff in Error vs. Joseph S. Harris, et al. Receivers of Phila. & Reading R. R. Co. MANDATE.

22 UNITED STATES OF AMERICA *ss:*

I, William H. Merrick, Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing pages from one to twenty-three inclusive to contain a full, true, complete and faithful copy of the original Transcript of Record in the case of The United States of America, Plaintiff in Error vs. Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, Receivers of The Philadelphia and Reading Railroad Company, Defendants in Error, on file and now remaining among the records of said court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court at Philadelphia, this twenty-eighth day of November, in the year of our Lord one thousand eight hundred and ninety-eight and of the Independence of the United States the one hundred and twenty-third.

[SEAL]

W. H. MERRICK.
Clerk U. S. Circuit Court of Appeals,
Third Circuit.

18 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the third circuit, greeting:

Being informed that there is now pending before you a suit in which the United States is plaintiff in error, and Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers of the Philadelphia & Reading Railroad Company, are defendants in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the district court of the United States for the eastern district of Pennsylvania, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the

19 United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twentieth day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

[SEAL.] JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

20 (Indorsement:) Supreme Court of the United States. No. 630, October term, 1898. The United States vs. Joseph S. Harris et al., receivers, &c. Writ of certiorari.

21 In the Supreme Court of the United States, October term, 1897.

THE UNITED STATES
v.
JOSEPH S. HARRIS ET AL., RECEIVERS, ETC. } No. 630.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record of said cause in the circuit court of appeals for the third circuit, now on file in the office of the clerk of the Supreme Court of the United States, may be taken as the return of the clerk of the circuit court of appeals to the writ of certiorari issued herein.

J. K. RICHARDS,
Solicitor-General.
JOHN G. LAMB,
Counsel for Respondent.

22 UNITED STATES OF AMERICA, *set.:*

I, William H. Merrick, clerk of the United States circuit court of appeals for the third circuit, by virtue of the foregoing writ of certiorari

and in obedience thereto do hereby certify to the Supreme Court of the United States the consent of the counsel for the respective parties thereto annexed as my return to the said writ.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twenty-ninth day of December in the year of our Lord one thousand eight hundred and ninety-eight and of the independence of the United States the one hundred and twenty-third.

[SEAL.]

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

23 (Indorsement:) Supreme Court of United States. No. 630. October term, 1897. The United States, plaintiff in error, vs. Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers of the Philadelphia and Reading Railroad Co. Writ of certiorari with stipulation of counsel and return of clerk.

24 (Indorsement:) File No. 17215. Supreme Court U. S. October term, 1898. Term No. 630. The United States, petitioner, vs. Joseph S. Harris et al. Writ of certiorari and return. Filed Dec. 31, 1898.

No. 630. 169.

Br. of Atty. Gen. (Richards) for Pet'r

Office Supreme Court U. S.
FILED
DEC 10 1898
JAMES H. McKENNEY,
Clerk.

Filed Dec. 10, 1898.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, PETITIONER,
v.
JOSEPH S. HARRIS, EDWARD M. PAXSON, and JOHN LOWBER WELSH, receivers of the Philadelphia and Reading Railroad Company.

No. ~~630~~ 169

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, PETITIONER,
v.
JOSEPH S. HARRIS, EDWARD M. PAXSON, and JOHN LOWBER WELSH, receivers of the Philadelphia and Reading Railroad Company.

No. —.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

Comes now the Solicitor-General, on behalf of the United States, and prays for a writ of certiorari to the United States circuit court of appeals for the third circuit in the above-entitled cause.

The proceeding herein is an action of assumpsit which was brought in the United States district court for the eastern district of Pennsylvania on the 20th day of January, 1896, by the United States against the receivers of the Philadelphia and Reading Railroad Company to recover the penalty allowed by sections 4386, 4387, 4388, and 4389 of the Revised Statutes, in the case of "cattle,

sheep, swine, and other animals" being confined by railroad companies in cars, etc., "for a longer period than twenty-eight consecutive hours without unloading the same for rest, water, and feeding for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes."

The plaintiff proved at the trial of the case that the defendants, as receivers aforesaid, had, through their agents, on November 25 and 26, 1895, "knowingly and willingly" failed "to comply with the provisions" of sections 4386 and 4387 while transporting certain horses from Bethlehem, Pa., the said horses having been received by them at Bethlehem in course of a through shipment from Buffalo, N. Y.

The question whether the receivers of a railroad company were officially liable under the law was reserved by the court, and a verdict was rendered for the Government. A rule was then taken for judgment *non obstante veredicto*, and his honor, Judge Butler, before whom the case was tried, in an opinion (p. 7 of the record) made the rule absolute, and ordered a judgment to be entered for the defendants.

A writ of error was sued out from the United States circuit court of appeals for the third circuit to review this judgment, and, after an argument in the latter court, the judgment was affirmed. A brief opinion was filed, in which, after calling attention to the particular sections under which the suit was brought his honor, Judge Acheson, declared:

> The persons designated in section 4388 and made liable to the penalty are "any company, owner, or

> custodian of such animals." The district court held that this language does not embrace receivers, who are simply the court's officers appointed to execute its orders; that the Philadelphia and Reading Railroad was in the custody of the court and was controlled and managed by it through these officers; and that the statute being penal, it was not to be extended by construction so as to take in receivers. We can not doubt the soundness of these views, and, accordingly, we affirm the judgment of the district court.

It is respectfully submitted that, for the following reasons, this construction of the aforesaid sections was erroneous; that receivers of railroad companies may become officially liable to the penalty provided for in section 4388, the properties in their hands being properties of railroad companies which they, as officers of the court, must manage in conformity with the law.

(I) From the wording of the sections it is clear that Congress intended to enact a law applicable to all railroad companies alike, whether solvent or insolvent, whether in the hands of their officers or in the hands of receivers appointed by the court. There is no narrowing inference to be drawn from the language used. The terms "railroad company" or "companies" recur several times throughout the sections, and no qualifying words are anywhere added from which the conclusion might be drawn that the law was to apply only to companies whose properties were still in the hands of their officers and directors.

(II) Such being the clear intendment of the law, it is only by giving an undue effect to the rule of strict construction applicable to penal and semipenal statutes

that the scope of the statute can be so narrowed as to exclude corporations whose properties are being managed by receivers. The cases in which the rule as to penal statutes has been enforced do not, it is submitted, justify this narrow construction of the act.

(III) If it be argued that Congress did not actually have in mind corporations whose properties had passed into the hands of receivers as well as those whose properties were still in the hands of their officers and directors, the principles of the law of railroad receiverships would nevertheless require that receivers of railroad companies should obey the sections, inasmuch as Congress has referred to "railroad companies" without distinction. In assuming the rights of the common carrier, the receivers in the present case became officially subject—or, more strictly speaking, the *property in their hands* became subject—to the public and private liabilities of the carrier, both at common law and statutory. This being so, it would seem that the law of receiverships invites, rather than repels, what the Government conceives to be the true construction of the act.

(IV) The contrary construction, besides being entirely unwarranted by the wording of the sections, will establish a most unfortunate precedent. It will place, as it were, a premium on insolvency by allowing insolvent railroad companies to "cut" rates in cases of the transportation of live stock where other competing companies that have remained solvent are obliged to maintain a higher rate for the same transportation, to say nothing of the suffering of the animals transported, and the evil to the communities where they are delivered. Furthermore, the

decision in this case, if allowed to stand, will necessarily be regarded as a judicial authorization to receivers generally to disregard any police regulations which may be established by Congress for the management of railroad companies, whenever and wherever such regulations speak solely of "railroad companies" and fail to mention receivers *eo nomine*.

This is a class case. A number of prosecutions have been commenced by the Department of Justice against receivers of railroad companies for violations of sections 4386, 4387, 4388, and 4389 of the Revised Statutes, which are held in abeyance awaiting the final determination of this case.

It is respectfully submitted that the question involved is, for these reasons, one of great importance to the public, and that it deserves the examination and consideration of this court.

The Solicitor-General therefore respectfully prays the court to issue a writ of certiorari to the United States circuit court of appeals for the third circuit, requiring the said court to certify the record and proceedings in the case to this court, for its review and determination in accordance with the provisions of section 6 of the act of Congress approved March 3, 1891, the petitioner believing that manifest error has arisen, and that the United States will be greatly prejudiced in its rights unless said writ of certiorari is allowed.

JOHN K. RICHARDS,
Solicitor-General.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

THE UNITED STATES
v.
JOSEPH S. HARRIS, EDWARD M. PAXSON, and JOHN LOWBER WELSH, receivers of the Philadelphia and Reading Railroad Company. } No. 169.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The original suit was brought by the United States against Joseph S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers of the Philadelphia and Reading Railroad Company, under sections 4386, 4387, 4388, and 4389 of the Revised Statutes, to recover a penalty for confining horses, in the course of interstate transportation, in cars more than twenty-eight consecutive hours without unloading them for rest, water, and food.

The case was tried before a jury, and a verdict rendered in favor of the Government, but Judge Butler

entered judgment for the receivers *non obstante veredicto*, holding, as matter of law, that the statute does not apply to a railroad company in the hands of receivers. The bill of exceptions shows (record, pp. 8, 9):

> Upon the trial the counsel of the said United States called a number of witnesses, the substance of whose testimony was that the defendants, as receivers aforesaid, while being in possession of and operating the property of a railroad company, whose road formed a part of a line of road over which cattle, sheep, swine, and other animals were conveyed from the State of New York to the State of Pennsylvania, did, through their agents, within the district aforesaid, on November 24, 25, and 26, 1895, knowingly and willfully confine certain horses in a car for a longer period than twenty-eight consecutive hours, without unloading the same for rest, food and water for at least five consecutive hours, contrary to the provisions of sections 4386, 4387, and 4388 of the Revised Statutes of the United States.
>
> The counsel for the defendants produced evidence in defense of the plaintiff's claim, and the learned judge thereupon charged the jury, reserving for subsequent determination the following points of law submitted by counsel for defendants:
>
> 1. The statute under which this suit is brought is a penal one, and must be strictly construed. It does not include within its terms receivers of railroads, and the defendants can not be held liable as such receivers in this action.
>
> 7. Under all the evidence in this case your verdict should be for the defendants.
>
> And thereupon the jury did find a verdict for the plaintiff in the sum of two hundred ($200) dollars, with six (6) cents costs.

The opinion of Judge Butler rendering judgment *non obstante veredicto* appears in the record, pages 6 and 7.

The opinion of the circuit court of appeals (Acheson and Dallas, circuit judges, and Kirkpatrick, district judge), is printed in the record, page 14. It simply adopts the views of Judge Butler.

ARGUMENT.

I.

This action was brought, without leave of the court, against the receivers of the Philadelphia and Reading Railroad Company, by virtue of the provisions of the second and third sections of the act of August 13, 1888 (25 Stats., 436), which reads as follows:

> SEC. 2. That whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, *such receiver or manager shall manage and operate such property* according to the requirements of the valid laws of the State in which such property shall be situated, *in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.* Any receiver or manager who shall willfully violate the provisions of this section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding three thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.
>
> SEC. 3. That every receiver or manager of any property appointed by any court of the United States *may be sued in respect of any act or transaction of his in carrying on the business connected with*

> *such property*, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such receiver or manager was appointed, so far as the same shall be necessary to the ends of justice.

Applying the second section to a railroad, it requires, under a severe penalty, that a receiver, appointed by a United States court, in possession of a railroad, shall manage and operate the same according to the laws of the State in which it is situated, in the same manner that the railroad company would be bound to do if in possession. The Government takes the ground that railroad receivers appointed by its courts must operate railroads in accordance with the State laws regulating railroads. Laws regulating railroads must be obeyed irrespective of the managing body.

A railroad is a railroad whether operated by officers or by receivers; a change of management does not change the character of the property nor exempt it from the laws which a wise public policy has applied to such common carriers. Of course, this section does not in terms refer to and include the laws of the United States, but the spirit and policy of it should be kept in mind in construing the laws of the United States. Since Congress requires railroad receivers appointed by United States courts to obey the State laws, is it reasonable to conclude that it expected them to ignore its own laws?

In further recognition of the principle that a railroad is a railroad whether operated by a company through its officers or by a company through its receivers, the second

section grants permission to sue a receiver, "in respect of any act or transaction of his in carrying on the business connected with such property without the previous leave of the court."

The scope and purpose of this act is well described by Judge Thayer, speaking for the circuit court of appeals, in *Eddy* v. *Lafayette* (49 F. R., 807, 809):

> The third section of the judiciary act of March 3, 1887 (24 Stats., 554), authorizing suits to be brought against receivers of railroads without special leave of the court by which they are appointed, was intended, as we think, *to place receivers upon the same plane with railway companies, both as respects their liability to be sued for acts done while operating a railroad* and as respects the mode of obtaining service.

The statute came before this court for construction in *McNulta* v. *Lochridge* (141 U. S., 327), and the court held, speaking by Mr. Justice Brown, that under it an action will lie against a receiver for causes of action accruing under his predecessor in office (p. 332):

> So long as the property of the corporation remains in the custody of the court and is administered through the agency of a receiver, such receivership is continuous and uninterrupted until the court relinquishes its hold upon the property, though its *personnel* may be subject to repeated changes. *Actions against the receiver are in law actions against the receivership, or the funds in the hands of the receiver, and his contracts, misfeasances, negligences and liabilities are official and not personal, and judgments against him as receiver are payable only from the funds in his hands.*

II.

A receiver appointed by a court to take charge of a railroad exercises the rights and privileges and is subject to the duties and obligations of a common carrier. The fact that he is appointed by a court does not place him above the laws regulating railroads. Indeed, having been appointed by a tribunal charged with the enforcement of law, a railroad receiver ought especially to observe the laws regulating the operation of the railroad of which he has been placed in charge by the court. As was said by Chancellor Van Kleet in *Klein* v. *Jewett, Receiver, et al.* (26 N. J. Eq., 474):

> Upon principle it would seem to be clear that no person can be permitted to exercise the rights and powers of a common carrier, especially where they embrace the franchises granted to a railroad corporation, except subject to the duties and liabilities of common carriers. Whether the receiver is regarded as the officer of the law, or the representative of the proprietors of the corporation, or its creditors, or as combining all these characters, he is intrusted with the powers of the corporation, and must therefore be necessarily burdened with its duties and subject to its liabilities. There can be no such thing as an irresponsible power, exerting force and authority, without being subject to duty, under any system of laws framed to do justice.

The general rule regulating actions against receivers of railroads under the common low and under the statutes is stated in High on Receivers (3d ed., p. 388):

> And since they (the receivers of a railroad) exercise the functions and powers of common carriers,

> they can not escape corresponding duties and liabilities. When, therefore, a statute of a State provides that railway companies shall be liable for all damages which may be sustained by any employee by reason of the negligence of other employees, or when damages are given by statute for the killing of cattle by a railway company, a receiver operating a railway is liable in like manner and to the same extent as the company itself would have been.

Under the common law a master is not liable to a servant for an injury sustained in consequence of the negligence of a fellow-servant. Kansas passed a statute abrogating this rule and making "every railroad company doing business in that State" liable for damages to an employee in consequence of the negligence of any of its servants. In the case of *Hornsby* v. *Eddy* (56 F. R., 461) it was held that this statute applied to a railroad company in the hands of its receiver as well as to one while managed by its officers. Judge Thayer, speaking for the circuit court of appeals of the eighth circuit, said, page 462:

> It is a fact of which we may well take judicial notice that great railway systems, which employ thousands of men, are frequently operated for a term of years through the agency of a receiver. Such receivers do not, as a general rule, change the working force of the road, or the rules and regulations by which trains are run or by which the other business of the road is transacted. The men whom they employ are engaged in the same quasi public service as other railway employees, and daily encounter the same risks and hazards. Furthermore, the receiver of a railroad operates it for the immediate benefit of the company by which it is owned, in that

> he discharges all of the public duties of the corporation, and appropriates the income of its road to the preservation of its property and franchises and to the payment of its debts. In view of the fact that many railroads have been operated for years by receivers, and the manner in which it is customary to operate them, Congress has recently recognized both the justice and the expediency of placing such receivers on a plane with railway corporations, by declaring in explicit language:
>
> (Quoting section 2 of the act of August 13, 1888; 25 Stats., 436; *supra*).

For these reasons, and because the evident intention of the lawmaker was to abrogate the old common-law rule in the case of railroads, however operated, the court adopted the above construction in accordance with the obvious spirit and purpose of the act.

So the Federal courts have held that their receivers must observe statutes forbidding unjust discriminations, although they contain no express mention of receivers and in terms apply only to railway companies. (*Missouri Pacific Ry. Co.* v. *Texas and Pacific Ry. Co.*, 30 F. R., 2; *Cutting* v. *Receiver*, 43 F. R., 747.)

In the case of the *Central Trust Co.* v. *Wabash, etc., Ry. Co.* (26 F. R., 12), the railroad fencing law of Missouri, providing for double damages resulting from a failure to fence, was applied to the Wabash Railroad while operated by its receivers, although the law in terms only applied to railroad corporations. The following is the opinion of Mr. Justice Brewer, then circuit judge, p. 12:

> In this case the only question is whether the double damage act of the State of Missouri is to be

enforced as against railroad property in the hands of a receiver. The Supreme Court of the United States have affirmed the validity of that act; and I know of no reason why it is not applicable to every road in the State, whether in or out of the hands of a receiver. It is true there may be no equity, where the court takes possession of the assets of an insolvent corporation, in saying to one man, whose cow is killed, "We will double the value of your cow as a basis of adjustment," and to a man who has done a day's work, "We will adjust your claims only at the value of such work," and then distribute the assets upon that basis between them. But while there may be no equity in that mode of distribution (and so I said in response to a letter written by some one who wanted to have me send all these cow cases to the State courts for trial), yet when the question is put directly before the court as to whether it will or not recognize the binding force of the statute against a road in the hands of its receivers, I have no doubt but that it is its duty to recognize it as binding and adjust the compensation accordingly.

III.

The statute in question was passed by virtue of the power granted to Congress by the Constitution "to regulate commerce with foreign nations and among the several States (Art. 1, sec. 8). I shall refer hereafter to several acts relating to railroads, in passing which Congress has exercised the power thus granted. The act under which this suit was brought was passed March 3, 1873, and was entitled "An act to prevent cruelty to animals while in transit by railroad or other means of transportation within the United states." It was carried

into the Revised Statutes and became sections 4386, 4387, 4388, and 4389, reading as follows:

SEC. 4386. *No railroad company* within the United States whose road forms any part of a line of road over which cattle, sheep, swine, or other animals are conveyed from one State to another, *or the owners or masters of* steam, sailing, or other *vessels carrying or transporting* cattle, sheep, swine, or other *animals from one State to another, shall confine the same* in cars, boats, or vessels of any description, for *a longer period than twenty-eight consecutive hours, without unloading the same for rest, water, and feeding,* for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes. In estimating such confinement the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included, it being the intent of this section to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon contingencies hereinbefore stated.

SEC. 4387. Animals so unloaded shall be properly fed and watered during such rest *by the owner or person having the custody thereof, or in case of his default* in so doing, then *by the railroad company or owners or masters of boats or vessels transporting the same* at the expense of the owner or person in custody thereof; and such company, owners, or masters shall in such case have a lien upon such animals for food, care, and custody furnished, and shall not be liable for any detention of such animals.

SEC. 4388. *Any company, owner, or custodian of such animals who knowingly and willingly fails to comply with the provisions of the two preceding sections,* shall, for every such failure, be liable for and forfeit and pay a penalty of not less than one hundred nor

more than five hundred dollars. But when animals are carried in cars, boats, or other vessels in which they can and do have proper food, water, space, and opportunity to rest, the provisions in regard to their being unloaded shall not apply.

SEC. 4389. The penalty created by the preceding sections shall be recovered by civil action in the name of the United States, in the circuit or district court of the United States, holden within the district where the violation may have been committed, or the person or corporation resides or carries on its business; and it shall be the duty of all United States marshals, their deputies and subordinates, to prosecute all violations which come to their notice or knowledge.

This is an act regulating a class of traffic within the power of Congress, namely, the transportation of cattle, sheep, swine, or other animals from one State to another, whether by rail or boat. It provides that such animals shall not be confined, either in cars or boats, longer than twenty-eight consecutive hours, without unloading them for rest, water, and food for at least five consecutive hours. Animals unloaded must be properly fed and watered by their owner or custodian, or in case of his default, by the railroad company or the owner or master of the boat, in which event the latter shall have a lien on the animals for the food, care, and custody furnished.

Such are the broad provisions of sections 4386 and 4387. Section 4388 contains the sanction of the law and provides that "*any company, owner, or custodian of such animals*" who knowingly fails to comply with these provisions shall, for every such failure, be liable for and forfeit and pay a penalty of not less than $100 nor more

than $500, while section 4389 provides that this penalty shall be recovered by civil action in the name of the United States.

Let me request the court's careful scrutiny of the words "*any company, owner, or custodian of such animals,*" used in section 4388, when read in the light of the provisions of sections 4386 and 4387. Section 4386 provides that "no railroad company," or "the owners or masters" of any vessel, shall confine the animals in transit longer than the period named without unloading them for rest, water, and food. Section 4387 imposes, primarily, upon "the owner or person having the custody" of the animals the duty of feeding and watering them when unloaded. Thus, section 4386 imposes a duty upon railroad companies and the owners or masters of vessels, while section 4387 imposes a duty upon the owners or custodians of the animals. It is for violating these duties that section 4388 provides the penalty, yet section 4388 in terms applies only to "any company, owner, or custodian of such animals." *It is clear, therefore, that the words "any company" used in section 4388 were intended by Congress and must be held to cover and include the common carrier, whether by rail or water, upon whom the duty was imposed by section 4386 of unloading the animals.*

In framing this act, Congress had in mind throughout the class of traffic to be regulated, and not the operating agency. General terms were used in describing the operating agency both in the sections providing the regulations and in that prescribing the penalty for their violation. The term "company" is an exceedingly broad one. In the popular mind it indicates the person

or persons, the association or corporation, carrying on the business of a common carrier by rail or water. The operator of a railroad line is a railroad company. The operator of a steamboat or steamship line is a steamboat or steamship company. The public does not stop to inquire what constitutes the company or how it acts, whether through officers or receivers; it is sufficient for the public if it runs a railroad, or steamboat, or steamship. It was in such sense that Congress used the word "company" in this act. It indicates the common carrier who enjoys the privileges and is subject to the obligations of carrying on the railroad or steamboat business.

The act in question was a humane one. Its title shows it was designed to prevent cruelty to animals while in course of interstate transit. It was not only intended to do this, but to protect the communities to which these animals might be shipped for use. Stock shipped for slaughter and confined an unreasonable time without rest or feed or water is apt to produce unwholesome meat, and this Congress knew. The act concerned itself only with the class of traffic. It did not concern itself with the operating agency. The regulations were to be complied with whenever animals were transported by rail or boat from one State to another. It did not matter who ran the railroad or the boat. Whoever ran the railroad or the boat had to see that these wholesome and humane regulations were complied with or had to pay the penalty for violating them. Let me now refer to a few cases construing or commenting upon this act and indicating its scope and purpose.

CASES.

In the case of *East Tennessee, Virginia and Georgia Railroad Co.*, 13 F. R., 642 (1882), Key, D. J., very properly held that section 4386 of the Revised Statutes only applies to shipments from one State to another, and does not cover the conveyance of animals from one point to another within the same State.

In *United States* v. *Boston and Albany R. R. Co.*, 15 F. R., 209 (1883), Nelson, J., sustained the constitutionality of the act and held that only one penalty can be applied for a shipment, not a separate penalty for each and every animal included. After referring to the cases sustaining the authority of Congress under the interstate-commerce clause, he says, page 211:

> The statute in question is directly within the terms of this clause of the Constitution. *It imposes regulations upon a particular class of traffic between States, and declares in what manner and upon what conditions it shall be carried on.* The statute can not be any the less within the constitutional authority of Congress, because its object is to require the humane treatment of live animals when in course of transportation, as articles of commerce, from one State to another.

The regulation is of a particular class of traffic, namely, the transportation of live animals. It is not a regulation of a particular class of carriers, that is, of corporations carrying on the railroad business, as distinguished from receivers of corporations. The statute reaches the class of traffic irrespective of the management which carries it on.

In *United States* v. *Louisville and Nashville Railroad*, 18 F. R., 480 (1883), Key, J., in charging a jury, held that where more than one railroad had handled the shipment, only the railroad in possession of the animals after the twenty-eight hours had expired was liable for the penalty. In other words, a railroad is not responsible for what happens after its control of the animals has ceased. As to the purpose of the law, Judge Key says, page 482:

> Cattle and other quadrupeds used for food appear to be the primary objects of protection by Congress from long confinement without food or water. We know, too, as a part of the history of the times which induced this legislation, that immense numbers of cattle were shipped over the long lines of railroads in the West to the Eastern cities, deprived of food and water for days, and stopped at the stockyards before being carried into the great cattle markets, like New York, and there gorged with food and water. *Consequently these statutes were passed, not more from considerations of sympathy for the cattle than to protect the public from imposition and from unwholesome food.*

If Congress passed this law to protect the public as well as to prevent cruelty to animals, how is it possible fairly and reasonably to conclude that the statute was intended to apply to a railroad in the hands of its directors and not to a railroad in the hands of its receivers. Congress had in mind the transportation of animals from one State to another, whether by boat or by rail, and it intended to hold the one in control of such transportation liable, if the humane regulation promulgated for the protection of the animals and the benefit of the public should be violated.

In *Newport News and Mississippi Company* v. *The United States* (61 F. R., 488), the circuit court of appeals, Judge Lurton delivering the opinion, held that unavoidable causes only would excuse a failure to comply with the provision requiring the unloading of cattle for rest, water, and feeding. The railroad company insisted that an accident to the train, although due to the negligence of its servants, would excuse a compliance with the law, but the court said, page 490:

> This reasoning, while plausible, is not satisfactory. To yield to it would emasculate a statute having a most humane object in view.

May we not say that the construction put upon this act by the lower courts emasculates it? There have been times when two-thirds of the railroads carrying on interstate business were in the hands of a receiver. And yet, taking the view of the courts below, such railroads are exempt from complying with the humane provisions of this act!

In *Cutting* v. *Kansas City Stock Yards Company* (82 F. R., 839) (1897), Foster, J., describes the purpose of this act as follows, page 843:

> The law of Congress concerning the unloading of cattle during their shipment (sections 4386–4388 Revised Statutes) is a humane provision, fixing a maximum period of twenty-eight hours for confining live stock without rest, food, or water. No one would question the necessity of unloading, feeding, watering, and resting this live stock; and the duty, from a moral, if not from a financial standpoint, to do this act of humanity for these poor creatures was just as imperative before as after the passage of the law.

Now, is there any less necessity for unloading, feeding, watering, and resting live stock when the railroad is operated by receivers than when it is operated by directors? If not, how can it be insisted that Congress did not intend to apply the law to the railroad and its operator, whatever the latter might be?

IV.

The statute under consideration is not the only one in which Congress has exercised its power to regulate commerce among the several States by enacting laws applying to interstate railways. The act under consideration is only one of six acts upon this general subject. Let me refer to the other acts for the purpose of showing that they each apply to an interstate railroad, irrespective of its management, and whether it is in the hands of its officers or its receivers.

1. The act of June 15, 1866, carried into the Revised Statutes as section 5258, provides:

> Every railroad company in the United States whose road is operated by steam, its successors and assigns, is hereby authorized to carry upon and over its road, boats, bridges, and ferries, all passengers, troops, Government supplies, mails, freight, and property on their way from any State to another State, and to receive compensation therefor, and to connect with roads of other States so as to form continuous lines for the transportation of the same to the place of destination. * * *

Here is a grant by Congress, under its power to regulate commerce among the several States, to every railroad

company carrying on interstate business, to transport passengers and freight from one State to another and to receive compensation therefor. The grant is to a "railroad company." Will it be insisted that as soon as a railroad goes into the hands of a receiver it loses the rights and privileges granted to it by this act? On the other hand, if it does not, does it become exempt from the duties and obligations which the Government has imposed upon it as a carrier of live stock from one State to another? The rights and privileges granted by this section appertain to the railroad, no matter by whom operated. So, too, do the duties and obligations imposed by section 4386.

2. Sections 6 and 7 of the act of May 29, 1884 (23 Stats., 31), establishing a Bureau of Animal Industry, prohibit railroad companies and boats from transporting live stock affected with any contagious or infectious disease, from one State to another. These sections read as follows:

> SEC. 6. That *no railroad company* within the United States, or *the owners or masters* of any steam or sailing or other vessel or boat, shall receive for transportation or transport, from one State or Territory to another, or from any State into the District of Columbia, or from the District into any State, any live stock affected with any contagious, infectious, or communicable disease, and especially the disease known as pleuro-pneumonia; nor shall any person, company, or corporation deliver for such transportation to any railroad company, or master or owner of any boat or vessel, any live stock, knowing them to be affected with any contagious, infectious, or

communicable disease; nor shall *any person, company, or corporation drive on foot or transport in private conveyance* from one State or Territory to another, or from any State into the District of Columbia, or from the District into any State, any live stock, knowing them to be affected with any contagious, infectious, or communicable disease, and especially the disease known as pleuro-pneumonia: *Provided*, That the so-called splenetic or Texas fever shall not be considered a contagious, infectious, or communicable disease within the meaning of sections four, five, six, and seven of this act, as to cattle being transported by rail to market for slaughter, when the same are unloaded only to be fed and watered in lots on the way thereto.

SEC. 7. That it shall be the duty of the Commissioner of Agriculture to notify, in writing, the proper officials or agents of any railroad, steamboat, or other transportation company doing business in or through any infected locality, and by publication in such newspapers as he may select, of the existence of said contagion; *and any person or persons operating any such railroad, or master or owner of any boat or vessel, or owner or custodian of or person having control over such cattle* or other live stock, within such infected district, who shall knowingly violate the provisions of section six of this act shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred nor more than five thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

It is to be observed that the sixth section applies in terms only to railroad companies. It does not mention receivers. Will it be contended that it applies only to

railroad companies acting through directors and not to those acting through receivers? Is a railroad company operating through receivers free to carry diseased cattle into any State, notwithstanding the prohibition of this act? The seventh section provides a punishment by fine or imprisonment for the violation of section 6 by "any person or persons operating such railroad, or the master or owner of any boat or vessel." The words "any person or persons operating any such railroad" are used as the equivalent of "a railroad company," within the meaning of the act.

3. The interstate-commerce act of February 4, 1887, as amended in 1889 and 1891. This act creates a commission with power to investigate, regulate, and control, in defined ways, interstate commerce by railroads. The provisions of this act apply "to any common carrier" transporting passengers or property by railroad from one State to another. Whether the railroad is operated by the company or a receiver is immaterial.

4. The act of October, 1888 (25 Stats., 501). This act provides that whenever controversies arise "between railroad and other transportation companies" engaged in interstate commerce and their employees and a proposition for arbitration by either party is made and accepted by the others, "in such event the railroad company" is authorized to appoint one person and the employees another, and the two thus selected a third who are constituted by the act a board of arbitration with certain duties, powers, and privileges. This act in terms applies only to a railroad company, but I fancy no one will contend that a railroad in the hands of a receiver can not

employ the machinery of this act to arbitrate differences with its employees.

5. The act of March 2, 1893 (27 Stats., 531), requiring the use of automatic couplers on interstate trains, and empowering the Interstate Commerce Commission to enforce its provisions. This act applies to "any common carrier engaged in interstate commerce by railroad." It of course applies to every interstate railroad company, whether operated by its directors or by a receiver. The fact that Congress has used the term "any common carrier by railroad" as an equivalent of "any railroad company" is shown by the provisions of the fourth section of this act, which makes it unlawful for "any railroad company" to use any car in interstate commerce not provided with secure grab irons or hand holds.

The first section makes it unlawful for any common carrier to use a locomotive in moving interstate traffic not equipped with a power or train brake. The second section makes it unlawful for any common carrier, after a certain date, to use cars in moving interstate traffic not equipped with automatic couplers. The third section empowers any person or company engaged in interstate commerce by railroad to refuse to receive cars not equipped with power or train brakes, and the fourth section provides as above. The court will observe the varying phraseology of these sections, namely, "common carrier engaged in interstate commerce," "such common carriers," "any person, firm, or company engaged in interstate commerce by railroad," "any railroad company * * * in interstate commerce." The language is different, but the meaning is the same. And

this is apparent by an examination of the sixth section, which provides a penalty for violating any of the provisions of the act, and applies to "any common carrier," thus reaching the operator, whether a person, company, or receiver.

IV.

But it is insisted that, notwithstanding the purpose and policy of the law, this suit was a penal proceeding to inflict punishment by enforcing a penalty, and therefore the strict rules of the criminal law must be applied in construing section 4388, under which the suit was brought. Since the statute only names as subject to the penalty for a violation of the law "any company, owner, or custodian of such animals," and since the receivers are neither a company nor an owner nor a custodian, the lower courts held that the suit could not be maintained; in other words, that the law does not apply to a railroad when operated by its receivers. Said Judge Butler (Record, pp. 6, 7):

> The construction of the statute, and the proceeding under it are governed by the rules of the criminal law as fully as if the proceeding was by indictment. The exclusive purpose of the section is to inflict punishment. Those named as liable to such punishment are *the railroad company, the owners, and the custodians of the animals.* The defendants here sued are neither. What reason, therefore, is there of supposing that the suit can be maintained? The language must receive a strict construction, confined to its obvious import. (*United States* v. *Hartwell*, 6 Wallace, 395; *United States* v. *Wiltberger*, 5 Wheat., 76; *Groosm* v. *Harmon*, 59 Ala., 519; *Com.* v. *Wells*, 110 Pa. St., 463.)

I shall take up later the statement of Judge Butler that "those named as liable to such punishment are the railroad company, the owners, and the custodians of the animals." It is clearly incorrect. At present I desire to discuss the rule of construction laid down by the judge. In a sense, but only in a sense, the section is a penal one. It provides for a penalty. But the act itself is not a penal act. It applies to interstate commerce a wholesome regulation for the prevention of cruelty to animals and for the protection of the public health. Such an act ought to be construed so as to carry out the manifest intention of Congress in enacting it. (*Taylor* v. *United States*, 3 How., 109.) I deny that there exists any rule of strict construction which requires the court to cripple and nullify this law, because of the use of a general term, when the meaning of the act and the intent of Congress is clear and unmistakable. Laws in this country are not drawn by precisians in the use of language. Ordinary language is used, and as such must be construed, keeping in mind the object of the law.

The rule of strict construction invoked by the lower court is no longer applied as it was in the days when the cruelty of the English criminal law led to its adoption as a merciful measure by the courts.

Says Maxwell on the Interpretation of Statutes (2d ed.), page 18:

> The rule which requires that penal and some other statutes shall be construed strictly was more rigorously applied in former times, when the number of capital offenses was one hundred and sixty or more; when it was still punishable with death to

> cut down a cherry tree in an orchard, or to be seen for a month in the company of gypsies. But it has lost much of its force and importance in recent times, since it has become more and more generally recognized that *the paramount duty of the judicial interpreter is to put upon the language of the legislature, honestly and faithfully, its plain and rational meaning, and to promote its object.* It was founded, however, on the tenderness of the law for the rights of individuals, and on the sound principle that it is for the legislature, not the court, to define a crime and ordain its punishment.

Similar is the statement of the existing rule by Sedgwick on Statutory and Constitutional Law (2d ed., p. 282):

> The rule that statutes of this class are to be construed strictly is far from being a rigid or unbending one; or, rather, it has in modern times been so modified and explained away as to mean little more than that penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment, the courts refusing, on the one hand, to extend the punishment to cases which are not clearly embraced in them, and, on the other, equally refusing by any mere verbal nicety, forced construction, or equitable interpretation to exonerate parties plainly within their scope.

These authorities are quoted with approval by the court, speaking by Mr. Chief Justice Fuller, in *United States* v. *Lacher* (134 U. S., 624, 629). In this case the rule of strict construction was unsuccessfully invoked in a prosecution of an employee in the New York post-office charged with embezzling a letter. The Chief Justice, before citing Sedgwick and Maxwell, says (p. 628):

> As contended on behalf of the defendant, there can be no constructive offenses, and before a man can be punished his case must be plainly and unmistakably within the statute. But though penal laws are to be construed strictly, yet *the intention of the legislature must govern in the construction of penal as well as other statutes, and they are not to be construed so strictly as to defeat the obvious intention of the legislature.* (*United States* v. *Wiltberger*, 5 Wheat., 76; *United States* v. *Morris*, 14 Pet., 464; *Am. Fur Co.* v. *United States*, 2 Pet., 358, 367.)
>
> "It appears to me," said Mr. Justice Story, in *United States* v. *Winn* (3 Sumner, 209, 211), "that the proper course in all these cases is to search out and follow the true intent of the legislature, and *to adopt that sense of the words* which harmonizes best with the context, and promotes in the fullest manner the apparent policy and objects of the legislature.

In the case of the *United States* v. *Hartwell* (6 Wall., 395) the modification of the old rule of strict construction, which obtains now, is stated with great clearness and fullness. That was a case where a clerk in the office of the assistant treasurer at Boston was indicted and convicted of embezzlement as an "officer." The court held that although the word "clerk" was not mentioned in the act, and although the defendant was known only as a "clerk," he was an officer within the intent and meaning of the law. The court, speaking by Mr. Justice Swayne, said (p. 395):

> We are not unmindful that penal laws are to be construed strictly. It is said that this rule is almost as old as construction itself. But whenever invoked it comes attended with qualifications and other rules no less important. It is by the light

> which each contributes that the judgment of the court is to be made up. *The object in construing penal, as well as other statutes, is to ascertain the legislative intent. That constitutes the law.* If the language be clear it is conclusive. There can be no construction where there is nothing to construe. The words must not be narrowed to the exclusion of what the legislature intended to embrace; but that intention must be gathered from the words, and they must be such as to leave no room for a reasonable doubt upon the subject. It must not be defeated by a forced and over-strict construction. The rule does not exclude *the application of common sense* to the terms made use of in the act in order to avoid an absurdity, which the legislature ought not to be presumed to have intended. *When the words are general and include various classes of persons there is no authority which would justify a court in restricting them to one class and excluding others, where the purpose of the statute is alike applicable to all.* The proper course in all cases is to adopt that sense of the words which best harmonizes with the context and promotes in the fullest manner the policy and objects of the legislature. The rule of strict construction is not violated by permitting the words of the statute to have their full meaning, or *the more extended of two meanings, as the wider popular instead of the more narrow technical one;* but the words should be taken in such a sense, bent neither one way nor the other, as will best manifest the legislative intent.

So much as to the rule of construction now applied to so-called penal statutes. The words must not be narrowed to the exclusion of what the legislature intended to embrace. The rule does not exclude the application of common sense to the terms made use of in the act

in order to avoid an absurdity, which the legislature ought not to be presumed to have intended. The rule of strict construction is not violated by permitting the words to have their full meaning, or the more extended of two meanings, as the wider popular instead of the more narrow technical one. The proper course in all cases is to adopt that sense of the words which best harmonizes with the context and promotes in the fullest manner the policy and objects of the legislature.

I have already discussed the scope and object of the act. The act regulates a particular class of traffic, the transportation of animals from one State to another, whether by rail or boat. It requires that such animals shall not be confined longer than twenty-eight consecutive hours without unloading them for rest, water, and food. The act looks to the means of transportation, the railroad and the boat. The person or company owning or operating the one or the other must do what the law requires in this class of traffic. The words "railroad company" denote the owner or operator in the case of a railroad, just as the words "owners or masters" embrace the owner or operator in the case of boats or vessels. This is the popular meaning of the language used. The public speaks of the Philadelphia and Reading Railroad Company as the operator of that line, whether the company is run by its officers or by its receivers. The company advertises its business in that way, whether run by its officers or by its receivers. It is still the Philadelphia and Reading Railroad Company. This is true of the Baltimore and Ohio Railroad Company, or any of the other numerous companies. No

distinction is drawn in the popular mind between a railroad company operated by its officers and the same company operated by its receivers. To the public it is one and the same company, furnishing the same facilities, entitled to the same rights, and subject to the same duties. One who uses the railroad either as passenger or shipper, expects the same protection whether the company is acting through its officers or its receivers. Congress used this language just as the people understand it, as describing the common carrier engaged in running a railroad. It is absurd to take any other view. There have been times when two-thirds of the railroads of the country were in the hands of receivers. What possible ground of distinction can be suggested between a railroad company acting through its officers and one acting through its receivers? Why should this regulation be applied to one and not to the other, and if the regulation was intended to be applied to the railroad company in both cases, and this is the only sensible construction, why should not the penalty apply to both? The penalty must apply to both or the law as to one is a dead letter. No wrong to railroad receivers can result from making them liable for a violation of this law. They are liable, not as individuals, but as officials. They stand in the place of the company. They must observe the laws as the representatives of the company, and if they or their agents do not they are liable to the penalty, not as persons, but as the representatives of the company, the sum adjudged against them being payable out of the earnings of the company in their hands.

I have already pointed out that the words "any company, owner, or custodian of such animals," used in section 4388, are intended to cover all those who can possibly violate the preceding two sections. The words "every company," therefore, must be held to apply to the common carrier, whether by rail or by boat. They include, therefore, a railroad company, whether a person, a partnership, or a corporation, and whether acting individually or through officers or receivers, and also a steamboat or steamship company, whether a person, a partnership, or a corporation, and whether acting individually or through officers or receivers.

With respect to quasi-public agencies, such as railroads, street railroads, telegraphs, telephones, etc., the word "company" is used to denote the person or persons, partnership, association, or corporation which carries on the business. The States, in their statutes, have defined the term "company" so as to cover the case and reach the operator. Thus the Ohio law (92 Ohio Laws, p. 79) provides that "any person or persons, joint stock association, or corporation, wherever organized or incorporated, * * * when engaged in the business of operating a railroad, either wholly or partially within this State, whether on rights of way acquired and held exclusively by such company, or otherwise, *shall be deemed to be a railroad company.*" Other quasi-public companies are similarly defined. Obviously a definition of that sort would include receivers, and it was such meaning of the word "company" that Congress had in mind when it used it in the statute in question.

"*Company*," in section 4388, means the common carrier, whether by rail or boat, who is obliged by section 4386 to give animals in transit over its line an opportunity for rest, food, and water. This company may be a person or persons, a partnership, association, or corporation, and it may act individually or through its officers or receivers; in either case it is a company within the meaning of this section, liable to the penalty if it has violated the act.

JOHN K. RICHARDS,
Solicitor-General.

FEBRUARY 8, 1900.

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UNITED STATES *v.* HARRIS.

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 169. Argued March 5, 6, 1900.—Decided April 9, 1900.

A receiver of a railroad is not within the letter or the spirit of the provisions of the act of March 3, 1873, c. 252, 17 Stat. 584, entitled "An act to prevent cruelty to animals while in transit by railroad or other means of transportation within the United States," now incorporated into the Revised Statutes as sections 4386, 4387, 4388 and 4389.

THIS was a suit brought in November, 1895, in the District Court of the United States for the Eastern District of Pennsylvania, by the United States against Joseph S. Harris, Edward M. Paxson and John Lowber Welsh, receivers of the Philadelphia and Reading Railroad Company, to recover a penalty in the sum of five hundred dollars for an alleged violation of sections 4386, 4387, 4388 and 4389 of the Revised Statutes of the United States.

There was a verdict in favor of the United States, but afterwards, on a question reserved at the trial, judgment was entered in favor of the defendants *non obstante veredicto*. 78 Fed. Rep. 290. Thereupon a writ of error was sued out from the Circuit Court of Appeals for the Third Circuit, and on March 14, 1898, the judgment of the District Court was affirmed. 57 U. S. App. 259. The cause was then brought to this court on a writ of *certiorari*.

Mr. Solicitor General for the United States.

Mr. John G. Lamb for Harris.

Mr. Justice Shiras delivered the opinion of the court.

This was an action to recover penalties for an alleged violation of the laws of the United States relating to the transportation of live stock; and the question involved is whether the defendants, who were in charge and control of the Philadelphia and Reading Railroad as receivers, appointed by the Circuit Court of the United States, were liable in such an action.

The act under which this suit was brought was passed March 3, 1873, and was entitled "An act to prevent cruelty to animals while in transit by railroad or other means of transportation within the United States." It appears in the Revised Statutes as sections 4386, 4387, 4388 and 4389, as follows:

"Sec. 4386. No railroad company within the United States whose road forms any part of a line of road over which cattle, sheep, swine or other animals are conveyed from one State to another, or the owners or masters of steam, sailing or other vessels carrying or transporting cattle, sheep, swine or other animals from one State to another, shall confine the same in cars, boats or vessels of any description for a longer period than twenty-eight consecutive hours, without unloading the same for rest, water and feeding for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes. In estimating such confinement the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included, it being the intent of this section to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon contingencies hereinbefore stated.

"Sec. 4387. Animals so unloaded shall be properly fed and watered during such rest by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad company or owners or masters of boats or vessels transporting the same at the expense of the owner or person in custody thereof; and such company, owners or masters shall in such case have a lien upon such animals for food, care and

custody furnished, and shall not be liable for any detention of such animals.

"SEC. 4388. Any company, owner or custodian of such animals who knowingly and willingly fails to comply with the provisions of the two preceding sections, shall, for every such failure, be liable for and forfeit and pay a penalty of not less than one hundred nor more than five hundred dollars. But when animals are carried in cars, boats or other vessels in which they can and do have proper food, water, space and opportunity to rest, the provisions in regard to their being unloaded shall not apply.

"SEC. 4389. The penalty created by the preceding sections shall be recovered by civil action in the name of the United States, in the Circuit or District Court of the United States, holden within the district where the violation may have been committed, or the person or corporation resides or carries on its business; and it shall be the duty of all United States marshals, their deputies and subordinates, to prosecute all violations which come to their notice or knowledge."

The contention on behalf of the Government is that, by the words "any company," used in section 4388, Congress intended to embrace all common carriers, whether by rail or water, upon whom the duty was imposed by section 4346 of unloading and feeding the animals; that the word "company" is used in a popular sense as signifying the person or persons, the association or corporation, carrying on the business of a common carrier by rail or water; that, as shown by its title, the act in question was a humane one, designed to prevent cruelty to animals while in course of interstate transit; that the regulations were to be complied with whenever animals were transported by rail or boat from one State or another; and that whoever had charge of the railroad or the boat had to see that these wholesome and humane regulations were obeyed or had to pay the penalty for violating them.

To strengthen the argument that Congress intended to include even receivers when managing a railroad under an appointment by a court, the Government's counsel calls attention

to the provisions of the second and third sections of the act of August 13, 1888, c. 866, 25 Stat. 433, 436, reading as follows:

"SEC. 2. That whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall wilfully violate the provisions of this section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding three thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"SEC. 3. That every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such receiver or manager was appointed, so far as the same shall be necessary to the ends of justice."

It is claimed that the effect of such legislation is to place receivers upon the same plane with railway companies as respects their liability to be sued for acts done while operating a railroad.

Upon the whole, the proposition of the Government's counsel is that the words "any company, owner or custodian of such animals," used in section 4388, are intended to cover all those who can possibly violate the preceding two sections; that the words "every company" must, therefore, be held to include a railroad company, whether a person, a partnership or a corporation, and whether acting individually, or through officers or receivers.

It may be conceded that it was the intention of Congress to subject receivers of railroad companies, appointed such by courts of the United States, to the valid laws and regulations of the States and of the United States, whose object is to promote the safety, comfort and convenience of the travelling public. But

we are not now concerned with the general intention of Congress, but with its special intention, manifested in the enactments under which this suit was brought. Was it the purpose of Congress when prescribing a penalty for any company, owner or custodian of animals who knowingly and willingly fails to comply with the directions of the statute, to include receivers? Can we fairly bring receivers within the penal clause by reasoning from a supposed or an apparent motive in Congress in passing the act?

It was the view of the courts below that receivers were plainly not within the letter of the statute, and not necessarily within its purpose or spirit; and an attentive examination has brought us to the same conclusion.

It must be admitted that, in order to hold the receivers, they must be regarded as included in the word "company." Only by a strained and artificial construction, based chiefly upon a consideration of the mischief which the legislature sought to remedy, can receivers be brought within the terms of the law. But can such a kind of construction be resorted to in enforcing a penal statute? Giving all proper force to the contention of the counsel of the Government, that there has been some relaxation on the part of the courts in applying the rule of strict construction to such statutes, it still remains that the intention of a penal statute must be found in the language actually used, interpreted according to its fair and obvious meaning. It is not permitted to courts, in this class of cases, to attribute inadvertence or oversight to the legislature when enumerating the classes of persons who are subjected to a penal enactment, nor to depart from the settled meaning of words or phrases in order to bring persons not named or distinctly described within the supposed purpose of the statute.

It may well be that Congress, in omitting to expressly include receivers in these sections, intended to leave them subject to the control and direction of the courts, whose officers they are. It does not, therefore, follow that the statute in question would be without operation where railroads are in the hands of receivers. The owners and custodians of the stock would still remain subject to the punishment prescribed.

We cannot better close this discussion than by quoting the language of Chief Justice Marshall, in the case of *United States* v. *Wiltberger*, 5 Wheat. 76:

"The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislative and not in the judicial department. It is the legislature, not the court, which is to define a crime and ordain its punishment. It is said that, notwithstanding this rule, the intention of the lawmaker must govern in the construction of penal as well as other statutes. But this is not a new independent rule which subverts the old. It is a modification of the ancient maxim and amounts to this, that though penal statutes are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be applied so as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature obviously used them, would comprehend. The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words there is no room for construction. The case must be a strong one indeed which would justify a court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute its language must authorize us to say so. It would be dangerous, indeed, to carry the principle that a case which is within the reason or mischief of a statute is within its provisions, so far as to punish a crime not enumerated in the statute because it is of equal atrocity, or of a kindred character with those which are enumerated. If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation, which it would be unsafe to consider as precedents forming a general rule in other cases." See likewise *Sarlls* v. *United States*, 152 U. S. 570.

The judgment of the Circuit Court of Appeals is

Affirmed.